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Federal Communications Commission

DA 98-1644

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-200
Table of Allotments,) RM-9144
FM Broadcast Stations.) RM-9313
(Ashton, Idaho and West Yellowstone,)
Montana))

REPORT AND ORDER

(Proceeding Terminated)

Adopted: August 12, 1998

Released: August 21, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* ("Notice"), 12 FCC Rcd 13771 (1997), issued in response to a petition filed by Mountain Tower Broadcasting ("petitioner") proposing the allotment of Channel 224A to Ashton, Idaho, as that community's first local aural transmission service. Petitioner filed supporting comments in response to the *Notice*. Comments and a counterproposal were filed on behalf of Gary N. Petersen ("Petersen") and Alpine Broadcasting Limited Partnership ("Alpine").^{1, 2}

2. Alpine counterproposes the substitution of Channel 243A for proposed Channel 224A at Ashton, as well as the substitution of Channel 225C for Channel 243A at West Yellowstone, Montana, and modification of its authorization for Station KWWF(FM) accordingly, pursuant to the provisions of § 1.420(g)(3) of the Commission's Rules.³ In support of its proposal Alpine asserts that Channel 243A can be allotted to Ashton without a site restriction whereas proposed Channel 224A would be restricted to a site located 9.1 kilometers (5.7 miles) northwest of the community. Additionally, Alpine states that the substitution of Channel 225C for Channel 243A would enable Station KWWF(FM) to improve its facilities at West Yellowstone.

¹At the time the counterproposal was filed, Gary N. Petersen was the permittee of Station KWWF(FM), Channel 243A, West Yellowstone, Montana, and Alpine, the assignee of Station KWWF(FM) (see File No. BAPH-970822EC). An assignment of the permit to Alpine was granted October 10, 1997, and consummation occurred on December 5, 1997. As a result of those actions, the counterproponent will be referred to herein as "Alpine".

²Public Notice of the counterproposal was given on July 1, 1998 (Report No. 2282) and a corrected Public Notice was issued on July 6, 1998.

³Alpine asserts that its counterproposal constitutes an "incompatible channel swap" as Channel 243A cannot be allotted to Ashton, Idaho, unless Channel 225C is substituted for Channel 243A at West Yellowstone, Montana, and that only the permittee at West Yellowstone would be able to use Channel 225C.

3. In further support Alpine reports that operation on Channel 225C at West Yellowstone would enable Station KWWF(FM) to provide an improved service from an existing electronics site on Sawtell Peak, rather than at its currently authorized location in the valley floor at that community. Alpine also claims that its requested modification at West Yellowstone would enable Station KWWF(FM) to provide an enhanced service to a projected gain area containing 40,000 people in an area of approximately 26,170 square kilometers, resulting in a net gain of 39,002 people and an area gain of 25,170 square kilometers.

4. In conclusion, Alpine remarks that its proposal would result in a net service benefit to Ashton, Idaho, as well as West Yellowstone, Montana, by ensuring that Ashton, Idaho, will receive its first local aural transmission service, while removing the site restriction required on Channel 224A pursuant to the *Notice*, and will enable Station KWWF(FM) to upgrade from a Class A to a Class C facility at West Yellowstone. Alpine pledges that if its proposal is granted, it will promptly apply for modification of its authorization, and, if authorized, to build the modified facilities and place those facilities into operation.

Discussion

5. Initially, although petitioner asserts that its counterproposal constitutes an "incompatible channel swap", thereby precluding it from competing expressions of interest, we disagree. In order to be an incompatible channel swap, each of the channel substitutions at the two communities that Alpine proposed must be mutually exclusive and unique between the authorized facilities. Here, Alpine does not propose to swap its current channel with another authorized facility. Additionally, each channel substitution must be not only mutually exclusive but also the only channel available at the existing transmitter sites at each community. Alpine proposes to relocate from its authorized site to accommodate Channel 225C. While it is true that the requested allotment of Channel 243A at Ashton conflicts with the presently authorized facilities of Station KWWF(FM), Channel 243A, West Yellowstone, Montana, at coordinates 44-38-56 and 111-05-50, a staff engineering study reveals the availability of other site restricted Class C channels at West Yellowstone, as well as additional Class A channels for allotment at Ashton, Idaho. Therefore, although Alpine's proposal has not been accepted as an incompatible channel swap, we will consider it as a nonadjacent upgrade request.⁴

6. The Ashton proposal (Channel 224A) and Alpine's counterproposal at West Yellowstone (Channel 225C) are mutually exclusive as they are separated by less than the 165 kilometers (105 miles) required between first adjacent Class A and C allotments. Although Alpine's suggested allotment of Channel 243A to Ashton is dependent upon Station KWWF(FM) relocating to Channel 225C, it has pledged to initiate such action promptly upon a grant of its proposal.

⁴The Corrected Public Notice, *supra*, announced that competing expressions of interest in the use of Channel 225C at West Yellowstone should be filed within fifteen days of the date of the Public Notice.

7. In consideration of the above, we will allot Channel 243A to Ashton, Idaho, based upon the interest expressed in providing a first local aural transmission service to that community. Additionally, in view of the absence of any competing expression of interest in the use of Channel 225C at West Yellowstone, Montana, we will modify the facilities for Station KWWF(FM), as requested to enable Alpine to provide an expanded FM service to its authorized community.

8. Channel 243A may be allotted to Ashton, Idaho, consistent with the technical requirements of the Commission's Rules, utilizing the city reference location at coordinates 44-04-12 and 111-26-54. Channel 225C may be allotted to West Yellowstone, Montana, at Alpine's specified site at coordinates 44-33-39 and 111-26-24.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 5, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Ashton, Idaho	243A
West Yellowstone, Montana	225C

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Alpine Broadcasting, Ltd. for Station KWWF(FM), IS MODIFIED to specify operation on Channel 225C in lieu of Channel 243A, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, Alpine Broadcasting, Ltd. shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and,
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing

FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Alpine Broadcasting Limited Partnership is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade for Station KWWF(FM) at West Yellowstone, Montana.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. A filing window for Channel 243A at Ashton, Idaho, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

14. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. All questions related to the window application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau